

FOURTH APPELLATE DISTRICT  
DIVISION ONE  
JULY 6, 2004

**D044350      Komar L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Komar L. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D043906      Terri R. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petitions are denied. The stay issued June 29, 2004, is vacated. McIntyre, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D044506      Residential Capital et al. v. Superior Court of San Diego County/Miguel Ritzberg**

The petition is denied.

FOURTH APPELLATE DISTRICT  
DIVISION ONE  
JULY 7, 2004

**D044505        In re Woods on Habeas Corpus**

The petition is denied.

**D041970        People v. Canole**

The judgment is affirmed. Huffman, Acting P.J.; I Concur: Irion, J. Dissenting opinion: Aaron, J.

**D043621        People v. Rodriguez**

The judgment is affirmed. Aaron, J.; We Concur: O'Rourke, Acting P.J., Irion, J.

**D042100        Adoption of Joshua S., a Minor**

**D042375**

The petition for rehearing is denied.

**D041930        Johnson v. Hooters of America, Inc., et al.**

The judgment is affirmed. Appellant to bear costs. Benke, Acting P.J.; We Concur: McDonald, J., Irion, J.

**D044498        In re Hatfield on Habeas Corpus**

The petition is denied.

**D044504        Manpower Temporary Services v. Superior Court of San Diego County/Castillo et al.**

The petition is denied.

**D0 44624        In re Julian E. et al., Juveniles**

The appeal is dismissed as untimely.

**D044509        In re Baker on Habeas Corpus**

The petition is denied without prejudice to refiling after consideration by the superior court is complete.

**D044375        Angela A. v. Superior Court of San Diego/San Diego County Health and Human Services Agency**

The attorney for petitioner Angela A. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

FOURTH APPELLATE DISTRICT  
DIVISION ONE  
JULY 8, 2004

**D043462        McCallum v. County of San Diego et al.**

The judgment of dismissal is reversed. The order sustaining the demurrer without leave to amend on the ground of lack of jurisdiction due to failure to allege exhaustion of County Charter remedies is reversed. The matter is remanded to the trial court for the entry of a new order sustaining the demurrer with or without leave to amend on any proper ground previously raised, except, as to the discrimination cause of action, on the ground of failure to allege exhaustion of County Charter remedies. Nares, Acting P.J.; We Concur: Haller, J., Irion, J.

**D042403        In re Miguel E. et al.**

**D042787        In re Miguel E. et al.**

**D043040        In re Miguel E., a Minor on Habeas Corpus**

(Consolidated) Miguel's petition for writ of habeas corpus is denied. Grandparents' appeal is dismissed. The June 10 and 17, 2003 findings and orders on the section 387 petitions are reversed. This matter is remanded to the juvenile court, with the following directions. As to Aaron, the court shall (1) require the Agency to give proper ICWA notice to and file with the court the notices, return receipts, and any responses; and (2) hold a new section 387 hearing. If, at the new hearing, the court determines the ICWA notice was proper and no Indian entity seeks to intervene or otherwise indicates Aaron is an Indian child as defined by ICWA, the court shall proceed with the section 387 hearing and exercise its discretion as outlined in this opinion. If, on the other hand, an Indian entity determines Aaron is an Indian child under ICWA, the court shall proceed in accordance with ICWA. As to Miguel and C.A., the court shall hold a new section 387 hearing at which it shall exercise its discretion as outlined in this opinion. (CERTIFIED FOR PUBLICATION) Huffman, J.; We Concur: McConnell, P.J., Aaron, J.

**D043914        In re Gagnon on Habeas Corpus**

The petition for writ of habeas corpus in re Philip Gagnon D043914, will be considered at the same time as the pending appeal in re Marriage of Kathryn Snyder and Philip Gagnon D043959. Respondent Kathryn Snyder is directed to file a response to the petition for writ of habeas corpus on or before July 26, 2004.

**D040310        Alberts et al. v. Franklin et al.**

The petition for rehearing is denied.

**D042813        Palacin v. Allstate Insurance Company**

The petition for rehearing is denied.

**D042334        Salient Networks et al. v. Jones et al.**

Appellant's request for publication is denied.

**D044018        Edward H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

**D044512        Lopez v. Superior Court of San Diego County/Stanly**

The petition is denied.

**D044633        Lopez v. Superior Court of San Diego County/Stanly**

The petition is denied.

FOURTH APPELLATE DISTRICT  
DIVISION ONE  
JULY 8, 2004 (Continued)

**D044583        In re Howell Sr. on Habeas Corpus**

The petition is denied without prejudice to refiling after exhaustion of administrative remedies (or upon a showing that exhaustion is excused) and consideration by the superior court.

FOURTH APPELLATE DISTRICT  
DIVISION ONE  
JULY 8, 2004

**D043009        People v. Knox**

The conviction is affirmed. The sentence is reversed and the matter is remanded for resentencing.  
Irion, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D043439        People v. Pettingill**

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., Aaron, J.

FOURTH APPELLATE DISTRICT  
DIVISION ONE  
JULY 9, 2004

**D042874      People v. Smith**

The judgment is affirmed. McDonald, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

**D041527      People v. Shawcroft**

The judgment is affirmed as to the conviction and reversed as to the sentence. The matter is remanded for resentencing. Haller, Acting P.J.; We Concur: Aaron, J., Irion, J.

**D044443      Eastgate Miramar Associates v. Velasquez**

Defendant/cross-complainant Eastgate Miramar Associates's appeal from the judgment entered on January 6, 2004 in favor of cross-defendant Luis Velasquez is DISMISSED as untimely. Under California Rules of Court, rule 2(a), a notice of appeal from a judgment must be filed no later than 60 days after the party filing the notice of appeal serves or is served by a party with notice of entry of judgment. The file shows cross-defendant Velasquez served "Notice of Partial Entry of Judgment," referring to the judgment entered in his favor, on March 10, 2004. Accordingly, the last day to file a notice of appeal from that judgment under California Rules of Court, rule 2(a) was Monday, May 10, 2004. Eastgate Miramar Associates's notice of appeal was untimely filed on May 11, 2004. If a notice of appeal is filed late, the reviewing court is without jurisdiction to proceed and must dismiss the appeal. California Rules of Court, rule 2(e); *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.)

**D044449      Batchelor et al. v. Richmond**

Curtis Richmond's appeal from the arbitration award and statement of decision filed on May 16, 2004 is DISMISSED on the ground the challenged filing is not an appealable judgment or order of the court. An appeal does not lie from an arbitration award, an order confirming the award or an order denying a request to vacate the award. The arbitration award and order confirming it are reviewable only on appeal from the judgment confirming the award. (*Cheeks v. California Fair Plan Assn.* (1998) 61 Cal.App.4th 423, 424, fn. 1; *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1454-1455.)

**D044446      Black Historical Society of San Diego v. City of San Diego et al.**

The stay issued by this court on July 7, 2004 is vacated because stay proceedings are pending in superior court and the developer has agreed not to alter or demolish the buildings before the superior court rules on the stay request on July 23, 2004. Responses remain due on July 19, 2004. Petitioner is to inform this court of the superior court's ruling at the conclusion of the July 23, 2004 hearing.

**D044331      Tania C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Tania C. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D041358      Collins V. Feldman et al.**

**D041569      Collins V. Feldman et al.**

**D042959      Collins V. Feldman et al.**

(Consolidated case) It is ordered that the opinion filed on June 10, 2004 is modified. There is no change in the judgment. The petition for rehearing is denied.